

REMARKS/ARGUMENTS

As noted, Applicants elect, with traverse, Group II, Claims 29-33, 36-41 and 43-53, drawn methods of assessing male fertility and the SEQ ID NO:4 for initial examination purposes only. As SEQ ID NO:4 is a human sequence (see Sequence Listing), Claims 29, 31-33, 36, 38-41, 43, 45-48, and 51-53 are believed to correspond to this elected specie.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness. MPEP §803.

Applicants respectfully traverse the Restriction Requirement on the grounds that adequate reasons and/or examples have not been provided to support a conclusion of patentable distinctness between the identified groups.

Further, Applicants respectfully traverse the Restriction Requirement on the grounds that the Office has not shown that a burden exist in searching all of the claims. In particular, it is certain that in searching the art for the claimed and elected methods, art will also be searched for the antibody art of Group I. Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper there must be a patentable difference between the species as claimed. MPEP §808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

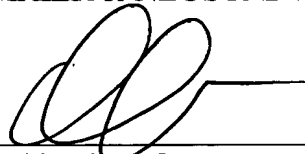
Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Election of Species Requirement. Withdrawal of the Election of Species Requirement is respectfully requested.

An action on the merits and allowance of the claims is requested.

Respectfully submitted,

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